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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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			ART UNIT 2144	PAPER NUMBER
DATE MAILED: 09/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/981,666	Applicant(s) ROACH ET AL.	
	Examiner Marc D. Thompson	Art Unit 2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,7-12 and 14-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,7-12 and 14-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 April 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This application has been reassigned to a new Examiner. See Conclusion section below, for new Examiner contact information.
2. The amendment, received 6/24/2005, has been entered into record.
3. Claims 1, 4, 7-12, and 14-29 remain pending.

Priority

4. No claim for priority has been made in this application.
5. The effective filing date for the subject matter defined in the pending claims in this application is 10/17/2001.

Drawings

6. The Examiner contends that the drawings submitted on 4/22/2002 are acceptable for examination proceedings, but submits that “cleaner” drawings are suggested prior to printing of any potentially resulting patent. The drawings appear to have been submitted as poor quality copies, or have undergone low quality image transfer when entered (i.e., scanned) into the electronic image file wrapper. Thus, new corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because of the overall quality of the drawings in the image file wrapper (IFW). The requirement for corrected drawings will not be held in abeyance. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure

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is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

Specification

7. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1, 4, 7-12, and 14-29 (especially claims 1, 4, 14-16, and 22) are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-42 of copending Application No. 09/981,301. This is a provisional

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obviousness-type double patenting rejection. The claims of these two applications, both dealing directly with user datagram protocol (UDP) packet encoding and header manipulation in a logical “application” layer of the protocol stack, are not considered to be patentably distinct.

10. Claims 1, 4, 7-12, and 14-29 (especially claims 7-12, 17-21, and 23-29) are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of copending Application No. 09/981,283. This is a provisional obviousness-type double patenting rejection. The claims of these two applications, both dealing directly with broadband interfacing transceiver equipment (BintU) and transmitting a user datagram protocol packet(s) with value-added information (UDPVA packet) to an end user, are not considered to be patentably distinct.

Claim Rejections - 35 USC § 101

11. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

12. Claims 14-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, the claimed invention lacks patentable utility, and the disclosed invention is inoperative and therefore lacks utility.

13. Claims 14-16 recite a data structure, per se, (see preamble) which is non statutory subject matter. See MPEP § 2106.

Claim Rejections - 35 USC § 112

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. Claims 7-12, and 14-29 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

16. Claims 7-12, 17-21 and 23-29 use limitation(s) including the term user datagram protocol "value-added" (UDPVA). The term "value added" in these claims is a relative term which renders the claim indefinite. The term "value added" is not defined by the claim, the specification does not provide a standard for ascertaining any requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention when reading these claims. Since the term "value added" is undefined, any limitation containing "UDPVA packet" or "user datagram protocol with value-added packet" is rendered indefinite.

For the purpose of examination, limitations reciting UDPVA packets will be construed to be any extension to a UDP packet.

17. Claims 14-16 recites "a data structure for a UDP packet comprising..." which is followed by system functional behavior. Data structures cannot provide functionality is isolation, and as such, it is unclear what is intended to be claimed. There is no provision for system components, merely functional behavior relying on system components never specifically recited or defined. In short, a data structure does not result in functional behavior without other system components which are not currently claimed. This is resulting a general inability to determine the intended

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metes and bounds of the claimed invention. Lastly, there may be evidence of the claims being incomplete by omitting essential elements, such omission amounting to a gap between the recited elements. See MPEP § 2172.01. The omitted elements include any/all physical, positively recited system elements and components.

18. Claims 15 and 18 contain the trademark/trade name "Java". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See, *inter alia*, *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe the Sun Microsystem's object oriented programming language subset of C++, additionally without specifying version number and/or instruction set(s) and, accordingly, the identification/description is indefinite.

19. Claims 19 and 22, minimally, seem to be invoking claim interpretation involving 35 U.S.C. 112, sixth paragraph, "means-plus-function" language. No such means can be easily isolated in the present specification to ascertain proper metes and bounds of the claimed invention by associating or imparting structure as set forth by the specification. Should these terms be interpreted according to 35 USC 112, sixth paragraph, it unclear which, if any means,

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are being referencing within the specification. Limitations including “means for generating”, “means for encoding”, “means for pushing”, etc., render these claims indefinite due to the inability to determine which features or structures are being referenced in regard to these “means”, if means-plus-function language is indeed being employed.

Applicant is required to indicate whether structure and limitations from the specification are required for proper interpretation for the claims (in accordance with 35 USC 112, sixth paragraph), and if so, Applicant is required to specify the portion(s) of the specification required for proper claim construction.

20. All the claims using the term “pushing” MUST clarify expressly what the usage of this term is attempting to describe in the currently claimed invention. It is highly unlikely that ANY dictionary could provide a definition of this term consistent with its’ current usage in this context. The use of this verb implying actual, physical force seems inappropriate in this context, and renders all claims using such terminology indefinite.

Discussion of known prior art

21. Due to the breadth of many of the claims and the breadth of the arguments presented on 6/24/2005, a brief discussion/overview of prior art and general known subject matter in the related computing environments is warranted.

22. A hierarchy of protocols which work together to provide the services (like information transport) on a communications network, was regularly referred to as a “protocol stack”, coined prior to 1970. A stack represents processing “layers” which are applied to application data for

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transport across a network or bus, for reception by another process or networked machine.

Current protocol stack models generally conform to the widely accepted open systems interconnect (OSI) model as follows. Transfer of information begins at an application which hands off information for delivery to the “top” of the stack (application layer), and processing (optionally) occurs at each lower level (presentation, session, transport, network, data link, and physical layers, respectively). Note that the “application layer” is NOT the application itself, but a liaison layer residing between an application and the remainder of the network transport protocol stack. In some reduced protocol stacks defined by OSI, no presentation or session layers exist, effectively defining a “5-layer” protocol stack comprising application, transport, network, data link, and physical layer protocols only. As the application information was passed “to the stack” and then “down the stack”, more information (generally headers and trailers) was added to the application data for transport (hence, “transport layer”), for example, information including error checking codes and receiving and destination logical port number handlers (e.g., TCP, UDP), source and destination addressing (e.g., IP, ATM, SONET), and path/connection identifiers (e.g., ATM). When the information reached a destination, the processing occurred identically, in reverse order. Thus, application data passed to a typical TCP/IP (or UDP/IP) stack at the time of the invention was formatted according to TCP, (or UDP) and prepended and appended with error checking values, among other values including logical port designations. This information then was processed for end-to-end transmission by the IP layer, involving the segmentation of the data into packets, and each packet then passed to the data-link layer, which may include myriad network types and associated protocols, e.g., ATM, SONET, frame relay, Ethernet, etc., and often involved further segmentation of the packetized data into frames. Then,

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each frame, individually, was actually transmitted. Upon reception by a processing end point, the data-link information was then examined (e.g., processing should not occur if the data is not addressed to this terminal, etc.), and the received data was buffered until the entire packet was delivered. The packet was then reassembled and passed up the stack to the IP layer for routing decisions, that is, the address information in the IP header was examined to properly route the data packet, and either continues up the stack should the packet not require further forwarding, or down the stack to be transmitted to another network node.

23. The “‘pushing’ of frame header information generated at the application layer to UDP packets in the transport layer [of the stack] and transporting the UDP packets” (as claimed and argued by Applicant as novel subject matter) was precisely what all systems executing a UDP/IP protocol stack did; the application data was appended/prepended/both with header information from the application, presentation, and/or session layer(s), and was then handed off to the transport layer for transport of the data to the other end of the logical pipe. This is the function of the transport layer – to transfer information end-to-end, port-to-port, process-to-process over an intervening medium. Differing functional behavior of the transport layer may include reliability, checksum/error checking, and or information filtering, but the operation of the “layer” was the same: deliver the application payload to a receiving application.

24. Thus, Examiner takes Official Notice (see MPEP § 2144.03) that the OSI model was notoriously well known at the time of invention. Likewise, the provision for the use of user data protocol (UDP) was also well known and widely implemented as admitted by Applicant (inter

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alia, present specification, Page 2, Lines 14-25), further evidenced by the specification included herein, dated 1980. Thus, the provision for “pushing frame header information generated at the application layer from the application layer to UDP packets in the transport layer and transporting the UDP packets” was notoriously well known and widely implemented in the art at the time of invention. This was the way a typical UDP/IP protocol stack operated well prior to the filing of the present application.

25. The Applicant is entitled to traverse the Official Notice according to MPEP § 2144.03. However, note that MPEP § 2144.03 also states “To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 (“[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention.”). A general allegation that the claims define a patentable invention without any reference to the Examiner’s assertion of Official Notice would be inadequate.” Additionally, *In re Boon*, 439 F.2d 724, 169 USPQ 231, 234 (CCPA 1971) states “as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed”. Also note that 37 CFR § 1.671(c)(3) states “Judicial notice means official notice”. Further, MPEP § 2144.03 states “If applicant does not traverse the examiner’s assertion of official notice or applicant’s traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in

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the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate."

In conclusion, a mere bald challenge will be interpreted as an inadequate traversal, and the Official Notice will be taken as admitted prior art.

Claim Rejections - 35 USC § 102

26. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

27. Claims 1 and 22 are rejected under 35 U.S.C. §102(b) as being anticipated by Postel (Request for Comments, RFC 768, "User Datagram Protocol"), hereinafter referred to as RFC 768.

28. RFC 768 described the UDP protocol to transport information from process to process across a logical/physical network. See, inter alia, Page 1. Application payload data was "pushed" to the UDP mechanism for transport to the receiving protocol stack. See, inter alia, Introduction. Also see, above, Official Notice.

29. Claims 1 and 22 are rejected.

30. Claims 1, 4 and 22 are rejected under 35 U.S.C. §102(b) as being anticipated by Schulzrinne et al. (Request for Comments, RFC 1889, "RTP: A Transport Protocol for Real-Time Applications"), hereinafter referred to as RFC 1889.

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31. RFC 1889 described RTP and RTCP as designed to be independent of the underlying transport and network layers. See, RFC 1889, Abstract. Thus, operation of RTP must operate the application layer of the reduced 5 layer OSI model. Also, see above, discussion in regard to Official Notice. Thus, application layer specific information was inherently part of the UDP packet(s) and datagram as a whole.

32. Claims 1, 4, and 22 are rejected.

Claim Rejections - 35 USC § 103

33. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

34. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. §103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR §1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. §103(c) and potential 35 U.S.C. §102(f) or (g) prior art under 35 U.S.C. §103(a).

35. Claims 1, 4, 7-12, and 14-29 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cleary et al. (U.S. Patent Application Publication 2002/0174438), hereinafter referred to as Cleary, in view of Schulzrinne et al. (Request for Comments, RFC 1889, "RTP: A Transport Protocol for Real-Time Applications"), hereinafter referred to as RFC 1889.

36. Cleary disclosed a data distribution center (navigator application server & video server, inter alia, Page 6, Paragraphs [0067]-[0072]) effecting the streaming of information over the

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network through broadband interfaces. The set top terminal units (180) provided control information and commands to the system through network interfaces. Cleary taught a data distribution center for transferring user datagram protocol (UDP) packets to an end user having an UDP encoder/decoder (codec) (Page 8, Paragraph [0098]), and UDP packets available for delivery to network destination addresses on a local area network or a wide area network (Page 2, Paragraph 0025; packets provided to requesting user via high speed channel).

37. While Cleary disclosed the invention substantially as claimed, Cleary did not explicitly teach generating UDPVA packets.

38. RFC 1889 taught that RTP operates independently from the transport mechanism(s) (Abstract) and provided operation in addition to UDP and IP protocols (section 2). The provision for use of RTP with the information distribution system of Cleary would have been obvious to one of ordinary skill in this art at the time the invention was made since both teachings relate directly to transmission of datagrams over a broadband network. Furthermore, since Cleary works primarily with video (time sensitive data), the teachings of RFC 1889 would increase the reliability of transmission over UDP (which does not provide any time reliability).

39. The provision for codecs, signal processors, multiple interface units, software implementation(s), and applets, do not constitute novel advancements in regard to the Cleary system modified using RFC 1889. While Cleary disclosed many of these features in the disclosure, all these features were well known, widely implemented components typical in network systems at the time of invention, and are not considered to constitute patentable distinctions.

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40. Claims 1, 4, 7-12, and 14-29 are rejected under 35 U.S.C. §103(a) as being unpatentable over Campbell et al. (U.S. Patent Application Publication 2003/0140159 A1), hereinafter referred as Campbell, in view of Herrod (U.S. Patent Application Publication 20030065784 A1), hereinafter referred as Herrod.

41. Campbell disclosed a client/server system for transmitting/retrieving real-time media information including a transmitter configured to transmit user defined protocol with value-added (UDPVA) packets to a data distribution center, inter alia, in Paragraphs [0026], [0088-0089] and [0098-0108]. Campbell shows further comprising software associated with the first BIntU transceiver that permits the first BIntU transceiver to interface with the second BIntU transceiver or the data distribution center (page 6, paragraph 110). Campbell also disclosed the data distribution center generating a return packet in response to the UDPVA packets, to the transceiver in Paragraphs [0088-0089] and [0098-0108]. Campbell also disclosed UDPVA packets including Java applets in Paragraphs [0023] and [0100].

42. While Campbell disclosed the invention substantially as claimed, Campbell did not expressly disclose a first broadband interface unit (BIntU) transceiver associated with a broadband network system wherein the first broadband network system further includes a data distribution center.

43. In the same art of network data distribution, Herrod disclosed a first broadband interface unit transceiver associated with a broadband network system (Paragraph [0081], including a data distribution center maintaining connectivity between applications during communications by mobile computer terminals operable in wireless networks in an analogous art for the purpose of

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maintaining connectivity between applications during communications by mobile computer terminals operable in wireless networks.

44. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Campbell and Herrod to result in a video distribution system having broadband connectivity operable over wireless links while improving application connectivity.

Response to Arguments

45. The arguments presented by Applicant in the response, received on 6/24/2005, are not considered persuasive.

46. Applicant argues that the prior art of record “does not teach pushing of frame header information generated at the application layer (of the OSI model) from the application layer to UDP packets in the transport layer’ as required by pending claims”. See, Response, received 6/24/2004, Pages 12-13. Applicant further notes the prior art taught “UDP then adds its own header to the RTP frame=UDP datagram and hands it over to IP. IP then adds its own header to the UDP datagram=IP datagram. The resulting packet of data appears to be real-time data+RTP header+UDP header+IP header. . .” See, Response, received 6/24/2004, Page 12. Given that RTP was “intended to be malleable to provide the information required by a particular application” (RTP specification, Page 4), this citation clearly provided the inclusion of an OSI application layer process providing application specific data in an UDP datagram.

47. If Applicant is attempting to describe the generation of modified UDP packet information and UDP packet generation in *the application itself*, this feature is not currently claimed, and may raise issues of proper enablement, written description, and would further raise issues of

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obviousness since the kernel typically executes protocol processing anyway. If application(s) running in the kernel additionally process information for network transport, this would simply be a rearrangement of modular functional parts. This functionality would result in skipping various layers of the OSI model which would be handled by the application itself. In any event, *some* application modular executing code segment defines and implements the protocol, typically executed on the same processor, i.e., the kernel.

48. As a general matter, not only the specific teachings of a reference but also reasonable inferences which an artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. *In re Preda*, 401 F.2d 825, 159 USPQ 342 (CCPA 1968) and *In re Sherpard*, 319 F.2d 194, 138 USPQ 148 (CCPA 1963). Skill in the art is presumed. *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985). Furthermore, artisans must be presumed to know something about the art apart from what the references disclose. *In re Jacoby*, 309 F.2d 738, 226 USPQ 317 (CCPA 1962). The conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. *In re Bozek*, 416 F.2d 738, 1385 USPQ 545 (CCPA 1969). Every reference relies to some extent on knowledge of persons skilled in the to complement that which is disclosed therein. *In re Bode*, 550 F.2d 656, 193 USPQ 545 (CCPA 1977). Lastly, *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971), clearly states “any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within level of ordinary skill at the time claimed invention was made and does not include knowledge gleaned only from applicant=s disclosure, reconstruction is proper”.

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49. Finally, the breadth of submitted claims 1 and 22 is absolutely stunning. Applicant has failed to modify the claim language to distinguish over the prior art of record by clarifying or substantially narrowing the claim language. Thus, Applicant apparently intends that a broad interpretation be given to the claims and the Examiner has adopted such in the present and previous Office action rejections. See *In re Prater and Wei*, 162 USPQ 541 (CCPA 1969), and MPEP § 2111. Applicant employs broad language which includes the use of words and phrases which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly as reasonably possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intend broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to clearly, distinctly, and uniquely claim the invention. The current claims infer coverage breadth which is inconsistent with breadth of the disclosure and are not found distinguishable above the prior art of record.

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Conclusion

50. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

51. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc D. Thompson whose telephone number is 571-272-3932. The examiner can normally be reached on Monday-Friday, 9am-4pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, David Wiley can be reached at 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned has recently changed, and is now 571-273-8300.

52. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MARC D. THOMPSON
MARC THOMPSON
PRIMARY EXAMINER

Marc D. Thompson
Primary Examiner
Art Unit 2144